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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BRYAN KEITH TEW,

Plaintiff,

vs.

FEDERAL BUREAU OF
INVESTIGATION; et al.,

Defendants.

CASE NO. 13-CV-0608 BEN (NLS)

ORDER:

- (1) GRANTING MOTIONS TO AMEND COMPLAINT**
- (2) DISMISSING ACTION WITH PREJUDICE**
- (3) DENYING AS MOOT MOTION TO PROCEED *IN FORMA PAUPERIS***
- (4) DENYING AS MOOT MOTION TO APPOINT COUNSEL**

[Docket Nos. 2, 18, 20, 23]

On March 15, 2013, *pro se* Plaintiff Bryan Keith Tew filed a Complaint against forty defendants, including the Federal Bureau of Investigation (“FBI”). (Docket No. 1.) Plaintiff also filed a Motion to Proceed *In Forma Pauperis* (Docket No. 2), a Motion to Appoint Counsel (Docket No. 18), and two Motions to Amend the Complaint (Docket Nos. 20, 23). In addition, Plaintiff has filed twenty-six other documents that the Court has rejected for failure to follow the Civil Local Rules. The Court decides the matters on the papers submitted. For the reasons outlined below, the

1 Court **GRANTS** the Motions to Amend the Complaint, **DISMISSES** the action with
 2 prejudice, and **DENIES** as moot the Motion to Proceed *In Forma Pauperis* and Motion
 3 to Appoint Counsel.

4 **BACKGROUND**

5 Plaintiff's Complaint is 127 pages long and names forty defendants, including
 6 the FBI. Plaintiff alleges that “[w]ith the advanced technology such as Directed Energy
 7 Weapons (DEW) which are an established fact as they are used for crowd control by
 8 the government, and other technology certainly unknown to most, via a shadow
 9 network of surveillance and other spying under DARPA projects, etc., the defendants
 10 are attacking me daily with DEW and also transmitting, intercepting, tampering,
 11 destroying by erasing and also blocking the content of a significant portion of the
 12 Plaintiff's phone calls, emails, faxes, tampering with physical mail and electronic and
 13 wireless communications” (Compl. at 11.) The 127-page Complaint mostly
 14 focuses on the FBI's alleged “Direct Energy Weapon Torture” against Plaintiff. (*Id.*
 15 at 5.)

16 The Complaint alleges many causes of action, including, “Civil Conspiracy,
 17 Assault and Battery, Stalking (having me stalked me [sic] en masse on foot and in
 18 vehicles). Medical Battery, Medical Malpractice, Organized Harassment, Respondeat
 19 Superior, Destruction of and Tampering with Evidence, Witness Tampering, Wrongful
 20 Termination, Intentional Infliction of Mental Anguish and Duress, Obstruction of
 21 Justice, blanketing my dwelling and surroundings with electromagnetic energy,
 22 Deprivation of Sleep (depriving me of sleep due to neurological intervention) and
 23 Other Forms of Direct Energy Weapon Torture, vandalizing my home and/or car,
 24 tapping my phones and hacking my computer, blacklisting me in the labor market,
 25 ‘workplace mobbing’. [and] bombarding my body with debilitating electronic and mind
 26 manipulation effects.” (*Id.* at 5.)

27 The First Motion to Amend the Complaint consists of a print-out of a Wikipedia
 28 article entitled “Directed-energy weapon” and a letter to the “Office of Chief of Police

1 San Diego," requesting that he investigate the FBI. (Docket No. 20.) The Second
 2 Motion to Amend the Complaint consists of an email exchange regarding returning
 3 merchandise to the business it was purchased from, bank statements, and multiple
 4 letters to law enforcement officers and United States Attorneys that request that the FBI
 5 be investigated. (Docket No. 23.)

6 DISCUSSION

7 I. MOTIONS TO AMEND THE COMPLAINT

8 Plaintiff's Motions to Amend the Complaint (Docket Nos. 20, 23) are
 9 **GRANTED.** The Court will consider the material submitted with the Motions to
 10 Amend the Complaint along with the Complaint.

11 II. *SUA SPONTE* SCREENING AND DISMISSAL

12 A complaint filed by any person proceeding, or seeking to proceed, *in forma*
 13 *pauperis* under 28 U.S.C. § 1915(a) is subject to mandatory *sua sponte* review and
 14 dismissal if the complaint is frivolous or malicious, fails to state a claim upon which
 15 relief may be granted, or seeks monetary relief from a defendant immune from suit. 28
 16 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000). A
 17 complaint is frivolous "where it lacks an arguable basis either in law or in fact."
 18 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

19 The legal sufficiency of a complaint is tested under Federal Rule of Civil
 20 Procedure 12(b)(6). *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Under Rule
 21 12(b)(6), dismissal is appropriate if the complaint fails to state a facially plausible
 22 claim for relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007). That is, the
 23 complaint must state enough facts to raise a reasonable expectation that discovery will
 24 reveal evidence of the claim. *Id.* at 556. Dismissal is also appropriate when the
 25 complaint lacks a cognizable legal theory. *Robertson v. Dean Witter Reynolds, Inc.*,
 26 749 F.2d 530, 534 (9th Cir. 1984). The court must assume the truth of all factual
 27 allegations and construe them in the light most favorable to the plaintiff. *Thompson*
 28 *v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d

1 336, 337-38 (9th Cir. 1996). *Pro se* litigants are not “excused from knowing the most
 2 basic pleading requirements.” *Am. Ass’n of Naturopathic Physicians v. Hayhurst*, 227
 3 F.3d 1104, 1107 (9th Cir. 2000).

4 Here, the Court finds Plaintiff’s claims to be frivolous because they lack even
 5 “an arguable basis either in law or in fact,” and appear “fanciful,” “fantastic,” or
 6 “delusional.” *Neitzke*, 490 U.S. at 325, 328. Because “it is absolutely clear that the
 7 deficiencies of the complaint could not be cured by amendment,” the Court
 8 **DISMISSES** the complaint **WITH PREJUDICE**. *See Franklin v. Murphy*, 245 F.2d
 9 1221, 1228 n.9 (9th Cir. 1984).¹

10 **III. MOTION TO PROCEED *IN FORMA PAUPERIS* AND MOTION TO APPOINT
 11 COUNSEL**

12 Because Plaintiff’s Complaint is dismissed, Plaintiff’s Motion to Proceed *In*
 13 *Forma Pauperis* and Motion to Appoint Counsel are **DENIED** as moot.

14 **CONCLUSION**

15 For the reasons stated above, the Motions to Amend the Complaint are
 16 **GRANTED**, the Complaint is **DISMISSED WITH PREJUDICE**, and the Motion to
 17 Proceed *In Forma Pauperis* and Motion to Appoint Counsel are **DENIED** as moot.
 18 The Clerk of Court shall close the file.

19 **IT IS SO ORDERED.**

20 DATED: 4/23/2013

21 
 22 HON. ROGER T. BENITEZ
 23 United States District Judge

24
 25 ¹ The Court notes that Plaintiff’s allegations are similar to those set forth in
 26 previously filed (and dismissed) complaints filed in Ohio and Kentucky: *Tew v.*
Federal Bureau of Investigation, Case No. 11-CV-554 (S.D. Ohio); *Tew v. Teamworks*
USA, Case No. 11-CV-0089 (W.D. Ky.); *Tew v. Yahoo, Inc.*, Case No. 11-CV-200
 (W.D. Ky.); *Tew v. Federal Bureau of Investigation*, Case No. 11-CV-241 (W.D. Ky.);
Tew v. Federal Bureau of Investigation, Case No. 13-CV-216 (W.D. Ky.); and *Tew v.*
Federal Bureau of Investigation, Case No. 12-CV-416 (S.D. Ohio).